IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 24336 of 1997

Between:

Ch.Satyanarayana, s/o Ch.Venkata Rao,aged about 43 years,working as Typist, O/o Sri Sarvodaya College, Nellore.

..... PETITIONER

AND

1. State of Andhra Pradesh, rep., by its Principal Secretary,

Education Department, Secretariat, Hyderabad.

2.Commissioner of Collegiate Education, Government of Andhra

Pradesh, Nampally, Hyderabad.

3. Secretary & Correspondent, Sri Sarvodaya college,Nellore.

4. Sri K.Madusudana Rao, UD Clerk, Sri Sarvodaya College,Nellore.

5. Sri K.Radhakrishna Murthy, U.D.Clerk, Sri Sarvodaya

College,Nellore.

6.Sri S.Sundaramamma Sarma, Steno-typist, Sri Sarvodaya College,

Nellore.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus (1) declaring the memo No.1495/CE/II-1/94-B, dated 4-6-1997 of the Govt of A.P, Education Dept (CE-II) Dept, dated 4-6-1997 as illegal, arbitrary, and without jurisdiction and offends Articles–14,16 and 21 of the Constitution of India

and set-aside the same; (2) declare that the petitioner is entitled to be promoted as Senior Assistant by reverting one of the Respondents 4 & 5 herein and the petitioner is entitled to be treated as Senior Assistant w.e.f. 22-6-1986 and for all consequential benefits; (3) direct the respondents 1 to 3 to promote the petitioner as Senior Assistant by reverting one of the Respondents 4 & 5 herein and treat him as Senior Assistant w.e.f. 22-06-1986 and grant all consequential benefits; and (4) to grant such and other relief or reliefs.

Counsel for the Petitioner: MR.V.JOGAIAH SARMA

Counsel for the Respondent Nos.1 & 2: GP for Higher Education.

Counsel for the Respondent No.5: MR.RAMA KRISHNA ANNAVAJJULA

The Court made the following Order:

This writ petition is filed by the petitioner aggrieved by the proceedings of the 1st respondent, dated 4th June, 1997, under which the 1st respondent rejected the claim of the petitioner for promotion to the post of Upper Division Clerk (hereinafter referred to as 'UDC').

2. According to the petitioner, he was originally appointed as Record Assistant on 24-8-1979. Later, he was promoted as Typist-cum-LDC on 27-8-1980. Subsequently, he has passed all the required departmental tests by 21-6-1986 for being promoted as UDC. However, ignoring the claim of the petitioner, the 4th and 5th respondents were promoted though they did not possess the requisite qualifications for being promoted as UDCs. Therefore, the petitioner made a representation for being considered for promotion to the post of UDC. The said representation was rejected by proceedings dated 3-7-1994. Aggrieved by that, the petitioner filed W.P.13736 of 1994. But the said writ petition was dismissed granting two weeks time to the petitioner to file representation before the Government seeking appropriate relief. That is how the petitioner made a representation before the Government by way of appeal. According to the petitioner, the persons, who have been appointed as LDCs., have to pass all the departmental tests in order to get promotion as UDCs. Without such qualifications a person holding the post of LDC cannot be promoted as UDC. The petitioner also contended that a vacancy had arisen in the year

1992 as a result of the reversion of one employee, byname, Sri M.Chandrasekhara Rao from the post of UDC to the post of LDC., as a disciplinary measure. Therefore, the case of the petitioner ought to have been considered in the said vacancy. But, even with reference to the said vacancy, it was observed by the 1st respondent, affirming the view of the Commissioner of Collegiate Education, that there is another

senior person, who is eligible for promotion. Therefore, the petitioner is not entitled to get promotion against the said vacancy. Questioning the said order, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner contended that as per the Rules in vogue, the 4th and 5th respondents, who required to pass the departmental tests before promotion to the post of UDC, have not passed the departmental tests even by 21-6-1986. The petitioner's case ought to have been considered even by reverting the 4th and 5th respondents. Alternatively, the learned counsel for the petitioner also contending that even against the vacancy that had fallen in the year 1992, the petitioner's case must be considered in preference to that of the 6th respondent, as the 6th respondent passed the tests subsequent to the petitioner. Therefore, the learned counsel sought for appropriate directions.

4. A counter has been filed by the Joint Director of Collegiate Education, on behalf of the respondents, disputing and denying the allegations. In the counter, it is stated that the Rules, which

contemplates passing of the departmental tests for promotion came into operation only from 17-12-1983. Prior to the said date, there was no obligation on the part of the employees of the private educational institutions to pass the departmental tests. Therefore, the 4th and 5th respondents, who were promoted in the year 1979 as UDCs., could not be considered that they are not qualified for promotion. In fact, the claim made by the petitioner was rejected by this Court. On the other hand, it was also stated that as per the directions of this Court in various writ petitions, the services of the employees, who were already promoted, were regularized. Even with reference to the vacancy that had fallen in the year 1992, it was stated that the 6th respondent is senior to the petitioner and eligible for promotion. Therefore the petitioner is not entitled for promotion. Therefore the learned Government Pleader sought for dismissal of the writ petition.

5. Heard both sides and considered the material on record.

6. Admittedly, the 4th and 5th respondents were appointed as LDCs in the year 1973. They were promoted in the year 1979 by which date the petitioner did not even join

the 3rd respondent institution. The petitioner was recruited as Record Assistant in the year 1979, though in the year 1980 he was promoted as Typist-cum-LDC, his appointment was regularized only in the year 1983. By the time the petitioner was regularized as LDC., the 4th and 5th respondents have put in more than 4 years of service as UDCs. Therefore, the

petitioner cannot claim any priority for promotion over those respondents. In addition, as observed in the order of the 1st respondent as well as stated in the counter, the promotions of the respondents 4 and 5 were regularized as per the orders of this Court.

7. Coming to the vacancy that had fallen in the year 1992, the petitioner claim that as he has qualified by passing all the departmental tests prior to the 6th respondent, and further, as he was claiming for promotion, in preference to the 4th and 5th respondents, his case has to be considered against the said vacancy. The said contention of the learned counsel for the petitioner is clearly devoid of any merit. There is absolutely no basis how the petitioner can claim seniority or priority over the 6th respondent, who was admittedly senior to the petitioner in the feeder post. Even assuming that the petitioner has passed all the departmental tests prior to the 6th respondent, as the 6th respondent had also passed all the departmental tests by the time the vacancy had fallen vacant, the 6th respondent shall have the priority being a senior to the petitioner and the petitioner cannot claim any precedence over the 6th respondent.

8. Under the above circumstances, there is no merit in the present writ petition questioning the impugned proceedings of the 1st respondent. However, if the vacancy of UDC that had fallen vacant in the year 1992, is yet to be filled, and if the 6th respondent has not already been promoted, the case of the petitioner may

also be considered along with the 6th respondent on merits in accordance with law.

9. Accordingly, the writ petition is disposed of. No costs.

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Dt. 10..08..2004 S. Ananda Reddy, J.

rkk/Kvh

To

1. The Principal Secretary, State of Andhra Pradesh,

Education Department, Secretariat, Hyderabad.

2.Commissioner of Collegiate Education, Government of Andhra

Pradesh, Nampally, Hyderabad.

3.Two CCs to G.P for Higher Education, High Court buildings, Hyderabad.

4. Two CD copies.